

BEFORE THE
GOVERNING BOARD OF THE
CHARTER OAK UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Accusations Against
Elizabeth Alva and Other Certificated
Employees of the Charter Oak Unified
School District,

OAH No. 2011030354

Respondents.

PROPOSED DECISION

Administrative Law Judge Sophie C. Agopian, Office of Administrative Hearings, State of California, heard this matter on April 20, 2011, at the Charter Oak Unified School District (District) Board Room in Covina, California.

Margaret A. Chidester, Attorney at Law, represented the District's Assistant Superintendent for Human Resources, Gloria Cortez (Cortez).

Michael R. Feinberg, Attorney at Law, represented the following 19 certificated employees of the District: Elizabeth Alva, Teddi Breaux, Robert Demonteverde, Emily Evans, Mary Fabela, Stella Guzman, Andria Leahy, Heather Lehigh, Dina McGhghy, Mary McKinley, Lauren Morris, Patricia Santiago, Jennifer Seagle, Carol Sepulveda, Gail Shea (Troncoso), Gregory Solis, Stacy Stirrett, Allison Sunyogh, and Virginia De Anda (Respondents).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

Testimonial and documentary evidence were received and oral stipulations were made on the record. The matter was submitted for decision on April 20, 2011.

FACTUAL FINDINGS

1. Assistant Superintendent Cortez filed the Accusations in her official capacity.
2. Respondents are certificated employees of the District with either permanent, probationary or temporary status.
3. On February 17, 2011, the Governing Board of the District (Governing Board), following the recommendation of the District's Superintendent, adopted Resolution Number 03-10-11 (resolution), deciding to reduce or discontinue the following services at the close of the 2010-2011 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
(1.1) K-6 Grade Classroom Instruction	16.5
(1.2) K-6 Grade Oak Knoll Virtual Academy Teacher	1.0
(1.3) Spring Kindergarten Teacher	0.3
(1.4) 7-8 Grade Physical Education Teacher	1.0
(1.5) 7-8 Grade New Horizons Classroom Teacher	1.0
(1.6) 9-12 Grade Social Science Teacher	1.0
(1.7) K-12 Grade Counselor	1.0
(1.8) School Psychologist	0.8
(1.9) Elementary Assistant Principal	<u>0.6</u>
Total	23.2 FTEs

4. The services identified in Factual Finding 3 are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. The Governing Board's decision to reduce these services will not result in a reduction of services below the levels mandated by state and federal law.

5. The Governing Board's decision to reduce or discontinue the particular kinds of services by 23.2 FTEs has made it necessary to decrease the number of permanent employees in the District, which means terminating the services of not more than a corresponding percentage of certificated employees of the District, permanent as well as probationary, at the close of the school year.

6. As a result, the Superintendent, or his designee, was directed to serve notices of termination or layoff to certificated employees whose rights are, or may be, affected by the reduction in force in accordance with Education Code sections 44955 and 44949. Assistant Superintendent Cortez, on behalf of the Superintendent and District, complied with the directive.

¹ Full-time equivalent position.

a. On February 22, 2011, the District personally served upon 38 certificated employees, including Respondents, a written “preliminary” notice that their services may not be required for the next school year. Each written notice set forth the reasons for the recommendation not to reemploy them, including the Board’s decision to reduce and/or discontinue the particular kinds of services identified in Factual Finding 2.

b. Twenty-eight (28) certificated employees, including Respondents, timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

c. Assistant Superintendent Cortez, thereafter, made and filed Accusations against each of the 28 certificated employees who requested a hearing. The Accusations, including all necessary documents, were timely served upon those employees, including Respondents.

d. Of the 28 certificated employees who received Accusations, only 20 filed a Notice of Defense objecting to the proposed layoffs and requesting a hearing. Two employees who filed a Notice of Defense, Elizabeth Diaz and Bruce Dougherty, did not appear at the hearing and were not represented by counsel. They are, therefore, not included as Respondents in this matter.

e. All Respondents, except for Virginia De Anda, timely filed a Notice of Defense. Because Ms. De Anda had requested a hearing in response to the preliminary notice and because the District did not dispute her standing as a respondent in this matter, Ms. De Anda was permitted to participate in the hearing as one of the 19 Respondents represented by counsel.

f. As a result of these actions, all prehearing jurisdictional requirements were met.

7. The District established that the reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3 is necessary due to the District being in a “fiscal crisis.” Therefore, the reduction in force is related to the welfare of the District and its pupils and is neither arbitrary nor capricious, but rather, a proper exercise of the District’s discretion.

8. In determining the number of layoff notices to issue, the District properly considered all positively assured attrition, including all known resignations and retirements at the end of the school year. However, many of the positions from which the employees are retiring or resigning are not ones that will be discontinued or reduced, and none of the Respondents possess the credentials necessary to fill the vacancies. Therefore, attrition does not impact any of the Respondents in this matter.

9. Among those served with a layoff notice, three were temporary teachers whose rights “may be” affected by the reduction. Only one of them, Andria Leahy, is a Respondent in this matter. Ms. Leahy did not dispute her status as temporary employee. Therefore, she

does not possess the rights afforded to permanent and probationary employees under Education Code sections 44949 and 44955: She and the other temporary teachers were provided with a layoff notice merely as a precaution.

10. The District stipulated that it also sent precautionary layoff notices to 12 certificated permanent or probationary employees, three of whom are Respondents in this matter, including Dina McGhghy, Jennifer Seagle, and Mary McKinley. The District served more layoff notices than the number of actual proposed layoffs because when it sent the preliminary notices, it had not yet applied the tie-breaking criteria adopted in its resolution to establish employees' seniority dates. It over-noticed employees to account for corrections of potential errors in its seniority list.

11. The District's actions in this matter set forth below meet the requirements of Education Code section 44955, and are neither arbitrary nor capricious.

a. It properly created its seniority list by determining the first date of paid service of each certificated employee in a probationary position and by properly applying reasonable tie-breaking criteria when necessary. Respondents did not challenge the seniority list as finally established by the application of the tie-breaking criteria.

b. The District "skipped over" employees with administrative services credentials, who are currently assigned to administrative positions, and who will be assigned to administrative positions for the ensuing school year. Respondents did not challenge the skipping criteria or its application to exempt certain employees from the layoff.

c. The District then used the seniority list to develop a proposed layoff list. It identified for layoff the least senior employees currently assigned in the various services being reduced, and then permitted eligible employees to bump into positions occupied by more junior employees. In determining who would be laid off for each kind of service reduced the District counted the number of reductions not covered by known vacancies, and determined who must be laid off in inverse order of seniority. The District's final proposed layoff list includes 24 certificated employees, 16 of whom are Respondents. Respondents did not disagree with the accuracy of the list.

12. According to the District's proposed layoff list, no junior employee will be retained to render a service which a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, by reason of Factual Findings 1 through 6.

2. The services listed in Factual Finding 3 are determined to be particular kinds of services within the meaning of section 44955 and applicable case law, by reason of Factual Findings 4 and 5.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in Factual Findings 3, because it relates solely to the welfare of the District's schools and pupils, by reason of Factual Finding 7.

4. By reason of Factual Findings 1 through 9, 11 and 12, and Legal Conclusions 1 through 3, cause exists to terminate the services of the following Respondents: Elizabeth Alva, Teddi Breaux, Robert Demonteverde, Emily Evans, Mary Fabela, Stella Guzman, Andria Leahy, Heather Lehigh, Lauren Morris, Patricia Santiago, Carol Sepulveda, Gail Shea (Troncoso), Gregory Solis, Stacy Stirrett, Allison Sunyogh, and Virginia De Anda.

5. By reason of Factual Findings 10 and 11, cause exists to retain the services of Respondents Dina McGhghy, Jennifer Seagle, and Mary McKinley.

ORDER

1. The Accusations against Elizabeth Alva, Teddi Breaux, Robert Demonteverde, Emily Evans, Mary Fabela, Stella Guzman, Andria Leahy, Heather Lehigh, Lauren Morris, Patricia Santiago, Carol Sepulveda, Gail Shea (Troncoso), Gregory Solis, Stacy Stirrett, Allison Sunyogh, and Virginia De Anda are sustained, and the District may notify them that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

3. The Accusations against Respondents Dina McGhghy, Jennifer Seagle, and Mary McKinley are dismissed.

Dated: April 27, 2011

SOPHIE C. AGOPIAN
Administrative Law Judge
Office of Administrative Hearings